

REMARKS

This Amendment is submitted simultaneously with filing of the above identified application.

With the present Amendment applicants have amended claims 12 and 13, the broadest independent claims on file, and also added claims 16 and 17 which are also independent claims.

It is believed that the independent claims currently on file clearly and patentably distinguish the present invention from the prior art applied by the Examiner in the parent application.

Claims 12 and 16 define a spur-toothed wheel, while claims 13 and 17 define a worm gear, in which a peripheral tooth face of the first wheel disc is cylindrical or in the shape of a truncated cone, while a peripheral toothed face of the second wheel disc is in the shape of a truncated cone. Claims 13 and 17 also define that the helical gearings are helical, non-globoidal gearings.

In the Office Action of August 25, 2003, the Examiner rejected the claims as being anticipated by French patent publication 2,741,416. It is respectfully submitted that this reference does not teach the new features of the present invention as defined in claims 12, 13, 16 and 17. The reference does not contain any hint or suggestion that such features can be provided in it.

In view of the fact that the claims were rejected as being anticipated, it is believed to be advisable to cite some decisions related to the present application.

As was stated in Lindenman Machine Fabrik GmbH v. American Hoist and Dairy Company, 221 USPQ 481, 485 (Fed. Cir. 1984) which is stated:

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

In the case Motorola, Inc. v. Interdigital Tech. Corp., 43 USPQ 2d 1481, 1490 (Fed. Cir. 1997) it was stated:

"For a prior art reference to anticipate a claim, the reference must disclose each and every element of the claim with sufficient clarity to prove its existence in the prior art."

Also, was stated in Row v. Dror, 42 USPQ 2d 1550, 1553 (Fed. Cir. 1997):

"A prior art reference anticipates a claim only if the reference discloses, either expressly or inherently, every limitation of the claim..."Absence from the reference of any claimed element negates anticipation."

It is believed to be clear that the rejection of the claims as being anticipated by the French reference should be considered as no longer tenable and should be withdrawn.

The reference also does not contain any hint or suggestion that such features can be or should be provided in it. In order to arrive at the applicant's invention as a matter of obviousness from the teaching of the reference, the reference has to be fundamentally modified. However, it is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has also been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision in re Randol and Redford (165 USPQ 586) that

Prior patents are references only for what they clearly disclose or suggestion; it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

Definitely, it can not be considered as obvious to modify the reference to include into it the features which were first proposed by the applicants and can not be considered as obvious. Therefore, an obvious rejection should be considered as not applicable as well.

In view of the above presented remarks and amendments, it is believed that the independent claims currently on file should be considered as patentably distinguishing over the art and should be allowed.

As for the dependent claims, these claims depend on the independent claim 12, they share its presumably allowable features and therefore it is respectfully submitted that they should be allowed.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance,

then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,


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